IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20..08..2005

C O R A M

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition No.20285 of 1999

R. Thaman .. Petitioner

Versus

1. The Presiding Officer,
   I Addl. Labour Court,
   High Court Compound,
   Chennai-104.

2. The Management of Easun
   Machine Tool Works,
   157, M.T.H. Road,
   Thiruninravur-602 024,
   Trivellore District. .. Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for a writ of certiorari, calling for the records on the file of the 1st respondent in I.D. No.297 of 1992 and quash the impugned award dated 29.1.1999 insofar as the 1st respondent has negatived the claim of the petitioner for reinstatement in service with continuity of service with back wages and all other attendant benefits.

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For Petitioner : Mr. K.M. Ramesh

For Respondent-2 : Mr. N. Balasubramanian

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O R D E R

The petitioner was terminated from service, after an enquiry, for having committed the act of misconduct of assaulting and abusing a superior officer. He raised an industrial dispute in I.D. No.297 of 1992. The Presiding Officer of the First Additional Labour Court, Chennai dismissed the I.D. holding that the order of dismissal was justified. However, a compensation of Rs.20,000/- was awarded. The workman has challenged that award in this writ petition.

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2. Learned counsel for the petitioner/workman submitted that the Labour Court, on a consideration of the preliminary issue, came to the conclusion that the enquiry was not properly conducted and thereafter permitted the second respondent/management to lead in evidence to justify the order of termination and therefore, the materials on record that can be looked into by the Labour Court are the pleadings and the oral and documentary evidence produced before the Labour Court alone; the enquiry report and the statements given therein cannot be looked into as the enquiry has been set aside. The learned counsel pointed to those extracts of the evidence of M.Ws.1 to 3 to show that the evidence adduced does not prove that the petitioner had assaulted his superior. Learned counsel further submitted that the incident of assault that is alleged to have taken place on 12.9.1991 had a background. On 31.8.1991, the petitioner, who was a Security Watchman, was on his night shift, the Security Officer (M.W.3) asked him to accompany him on a surprise inspection. They found that one Kannan (Watchman on duty) and the Assistant Security Officer, Kutty (M.W.2) were sleeping while on duty. On instructions from the Security Officer, the petitioner noted down the same in the General Diary. Ever since that incident, the Assistant Security Officer above named nursed a grudge against the petitioner. So, he lodged a complaint alleging that the petitioner had assaulted him on 12.9.1991. According to the learned counsel, such an incident never took place. Learned counsel further submitted that the extracts of the O.P. Chit and the Accident Register marked as Exs.M.21 and 24 show that the Assistant Security Officer had gone to the hospital for treatment only on 14.9.1991. This proves that the entire incident is imaginary. Learned counsel for the petitioner also submitted that the Labour Court ought not to have considered the evidence of M.W.4, since he was examined only during the enquiry. Since this was set aside, the entire report cannot be looked into. Learned counsel also submitted that considering the past record of the petitioner, some leniency should be shown. Learned counsel placed reliance on 1999 (I) L.L.J. 275 [Neeta Kaplish vs. Presiding Officer, Labour Court], where the Supreme Court has held that when the enquiry was held to be defective, it has to be ignored altogether and it would not constitute "fresh evidence and material on record". Learned counsel also relied on 2005 (II) L.L.J. 901 [Management of Salem Steel Plant vs. Presiding Officer, Labour Court, Salem], where the scope of Section 11-A of the Industrial Disputes Act, 1947 has been dealt with.

3. Learned counsel for the second respondent/ management would submit that this is a case where physical assault on a superior officer was proved; three witnesses were examined and the evidence indicated that the incident did take place; and in such a situation, this Court cannot sit in appeal and re-appraise the evidence. If the conclusion arrived at by the Labour Court was a reasonable one, it cannot be interfered with on the ground that it is possible to arrive

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at a different conclusion. Learned counsel placed reliance on 2001 (I) L.L.J. 1023 [Thanthai Periyar Transport Corporation Ltd. vs. Harikrishnan], where a Division Bench of this Court held that "while exercising the discretionary power under Article 226 of the Constitution of India, this Court should not be taken as 'an appellate court'". Reliance was also placed on 2001 (I) L.L.J. 1095 [Workman of Nilgiris Co-operative Marketing Society Ltd. vs. State of Tamil Nadu], where another Division Bench of this Court refused to re-appraise the evidence when the award clearly showed that "the Tribunal has exercised pains and discussed the oral and documentary evidence adduced by both sides". Learned counsel also relied on J.T. 2005 (3) S.C. 102 [Madhya Pradesh Electricity Board vs. Jagdish Chandra Sharma], which was also a case where the employee had been found hitting and injuring his superior officer at the work place. The following paragraph of this judgment are relevant :

> "In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the work place, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the work place in an organization like the employer herein, is the sine qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, 'discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large'. Obviously this idea is more relevant in considering the working of an organization like the employer herein or an industrial undertaking. Obedience to authority in a work place is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion."

4. In the case on hand, three witnesses were examined by the Management, none on the side of the employee; four documents were

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marked on the side of the employee and 27 documents on the side of the Management. M.W.1 was working as a Security Watchman with the second respondent. He had given evidence during the disciplinary proceedings. In cross-examination, he has stated that he was not an eye-witness to the act of assault. However, he heard a whistle and went to the spot and the A.S.O. told him that the petitioner had assaulted him. He had also stated in the cross-examination that he saw the A.S.Os. shirt having been torn. In re-examination, he has stated that at the time of the incident, he saw the petitioner and the A.S.O. together. M.W.3 is a Security Officer by name Perumal, who according to the petitioner had asked him to accompany on 30.8.1991. In his chief-examination, he has stated that on 12.9.1991, M.W.1 told him at 11 p.m. that the petitioner had hit M.W.2 and he immediately went to the office premises and saw M.W.2, who told him that the petitioner had assaulted him; he saw abrasions on the cheek and hands of M.W.2. M.W.3 also gave evidence that he saw that M.W.2 was injured in his cheek and hands, which tallies with the injuries noted in Ex.M.24. The fact that in the Accident Register, it is recorded that the assault was by "one known person" will not falsify the incident. Similarly, the fact that the assaulted officer had gone to the hospital only at 11.30 a.m. on 14.9.1991, though he had been assaulted at 10.45 p.m. on 12.9.1991 would not also falsify the case of the Management. A reading of the evidence would show that the conclusion drawn by the Labour Court is supported by the evidence of witnesses and there is nothing to indicate that the conclusion drawn by the Labour Court is so perverse or arbitrary and not warranted by the evidence on record. When the presence of the petitioner and M.W.2 together on 12.9.1991 as spoken to by M.W.1 is not rebutted and when the evidence of M.W.3 that he saw M.W.2 at 11 a.m. with injuries and then M.W.2 informed him that he was assaulted by the petitioner is also not rebutted, and when the injuries mentioned in Ex.M.24 and the injuries spoken to by M.W.3 corroborate each other, the case of the management stands probabilised. In these circumstances, I do not think that the punishment imposed on the petitioner was harsh or disproportionate to the charged proved against him.

5. It is true that the Labour Court has referred to the evidence of one Xavier, M.W.4. But, there is only one reference in the award to M.W.4. It is seen that right throughout, the Labour Court has considered the oral evidence of M.Ws.1 and 3. In (1996) 6 S.C.C. 417 [State of Rajasthan vs. B.K. Meena], the Supreme Court pointed out the differences in the way in which evidence should be weighed in criminal proceedings and disciplinary proceedings; in criminal proceedings, there is the necessity to prove the case beyond reasonable doubt, whereas in disciplinary proceedings, what is required is the preponderance of probability. In (2003) 3 S.C.C. 583 [Lalit Popli vs. Canara Bank], the Supreme Court held as follows :

"In case of disciplinary enquiry, the technical rules

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of evidence have no application. The doctrine of 'proof beyond doubt' has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

6. Learned counsel for the petitioner submitted that even if the order of termination cannot be interfered with, some indulgence can be shown at least with regard to the compensation. The question of awarding compensation would arise only if the court or the Tribunal comes to the conclusion that the order of dismissal is not warranted. In those circumstances, if the confidence of the Management is lost, or for other reasons reinstatement is not possible, compensation is awarded. In this case, when the act of misconduct is serious in nature, and the order of termination is confirmed, the question of compensation does not arise, much less enhancement of compensation.

7. For all these reasons, the writ petition is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Presiding Officer,
First Additional Labour Court,
High Court Compound,
Chennai-600 104.

+ 1 cc to Mr.K.M. Ramesh, Advocate SR No 35182

+ 1 cc to Mr.N. Balasubramanian, Advocate SR No 35209

Pre-delivery Order in
W.P. No.20285 of 1999

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